

**BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Joseph M. Asher et al.
Application No. : 10/687,302 Confirmation No. : 7925
Filed : October 14, 2003
For : SYSTEM AND METHOD FOR GENERATING
CUSTOMIZED ODDS BET FOR AN EVENT
Group Art Unit : 3714
Examiner : Christian E. Rendon

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Commissioner for Patents
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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Sir:

This is an appeal from the decision of Examiner Rendon, Group Art Unit 3714, in the Final Office Action of May 13, 2008 (hereinafter, "Final Office Action"), rejecting claims **1, 3, 8-10, 12-15, 19-20, 22-26, 30, 33, 35-37, 41, 43-44, and 46-72** in the present application. A Notice of Appeal was filed on November 12, 2008.

This paper includes items (i) through (x) as required under 37 C.F.R. § 41.37(c)(1) and M.P.E.P. § 1205.

Applicants herewith request a five-month extension of time, which extends the time to file this paper to August 10, 2009.

The Commissioner is hereby authorized to charge (i) the Appeal Brief filing fee as set forth in 37 C.F.R. § 41.20(b)(2) of \$540.00, (ii) and the five-month extension of time fee as set forth in 37 C.F.R. § 1.17(a)(5) of \$2350.00, as well as any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-3938.

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I. REAL PARTY IN INTEREST

The real party in interest of the present application is Cantor Index LLC, a limited liability company organized and existing under the laws of the State of Delaware, U.S.A., and having a place of business at 110 East 59th Street, New York, NY 10022.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

III. STATUS OF CLAIMS

The following claims are pending and stand rejected in the present application:

- Independent claims **1, 13, 25, and 36.**
- Dependent claims **3, 8-10, 12, 14-15, 19-20, 22-24, 26, 30, 33, 35, 37, 41, 43-44, and 46-72.**

The following claims were previously cancelled:

- Claims **2, 4-7, 11, 16-18, 21, 27-29, 31-32, 34, 38-40, 42, and 45.**

The following claims are being appealed:

- Independent claims **1, 13, 25, and 36.**
- Dependent claims **3, 8-10, 12, 14-15, 19-20, 22-24, 26, 30, 33, 35, 37, 41, 43-44, and 46-72.**

IV. STATUS OF AMENDMENTS

No amendments have been filed after the Final Office Action of May 13, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER**A. Independent Claim 1**

Independent claim 1 is directed at an apparatus that comprises at least one processor having instructions associated therewith. *See, e.g., Specification* page 12, line 24 to page 13, line 13; and Fig. 1, elements 16, 38, and 42. The instructions, when executed by the processor, make the processor operable to receive from a bettor a wager on an event at desired odds, in which the event comprises a plurality of participants and a plurality of betting options. *See, e.g., Specification* page 6, lines 3-24; page 12, lines 24-29; page 21, line 24 to page 22, line 9; Fig. 1, element 12; and Fig. 4, element 200. The instructions, when executed by the processor, also make the processor operable to determine odds for the plurality of betting options, the odds comprising at least: first odds for a first betting option, and second odds for a second betting option. *See, e.g., Specification* page 6, lines 3-13; page 9, lines 4-24; page 12, lines 24-29; page 21, line 24 to page 23, line 2; and Fig. 4, element 204. The instructions, when executed by the processor, also make the processor operable to determine that a combination of at least the first odds and the second odds at least approximates the desired odds. *See, e.g., Specification* page 6, line 14 to page 7, line 2; page 12, line 30 to page 13, line 13; page 15, line 1 to page 16, line 2; page 16, line 30 to page 17, line 15; page 17, line 23 to page 18, line 2; page 21, line 24 to page 23, line 2; page 23, line 12 to page 24, line 2; Fig. 2; Figs. 3A-3B; Fig. 4, element 206; and Fig. 5. The instructions, when executed by the processor, also make the processor operable to establish for the bettor, based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, at least: a first bet on the first betting option, and a second bet on the second betting option. *See, e.g., Specification* page 8, lines 16-24; page 18, lines 3-12; page 21, line 24 to page 23, line 2; Figs. 3A-3B, elements 158 and 160; and Fig. 4, element 208.

B. Independent Claim 13

Independent claim 13 is directed at method that includes identifying a field of participants for an event, each participant associated with particular odds to finish in a particular subset of finishing positions in the event. *See, e.g., Specification* page 6, lines 3-13; page 9, lines 4-24; page 12, lines 24-29; page 21, line 24 to page 23, line 2; and Fig. 4, element 204. The method also includes identifying customized odds for a bet. *See, e.g., Specification* page 6, lines

3-24; page 12, lines 24-29; page 21, line 24 to page 22, line 9; page 23, lines 12-20; Fig. 1, element 12; Fig. 4, element 200; and Fig. 5, element 252. The method also includes selecting a plurality of participants from the field of participants such that the odds associated with each of the selected participants combines to at least approximate the customized odds for the bet. *See, e.g., Specification* page 6, line 14 to page 7, line 2; page 12, line 30 to page 13, line 13; page 15, line 1 to page 16, line 2; page 16, line 30 to page 17, line 15; page 17, line 23 to page 18, line 2; page 21, line 24 to page 23, line 2; page 23, line 12 to page 24, line 2; Fig. 2; Figs. 3A-3B; Fig. 4, element 206; and Fig. 5, element 258. The method further includes establishing the bet on the selected participants. *See, e.g., Specification* page 8, lines 16-24; page 18, lines 3-12; page 21, line 24 to page 23, line 2; Figs. 3A-3B, elements 158 and 160; and Fig. 4, element 208.

C. Independent Claim 25

Independent claim 25 is directed at a method that includes receiving from a bettor a wager on an event at desired odds, in which the event comprises a plurality of participants and a plurality of betting options. *See, e.g., Specification* page 6, lines 3-24; page 12, lines 24-29; page 21, line 24 to page 22, line 9; Fig. 1, element 12; and Fig. 4, element 200. The method also includes determining odds for the plurality of betting options, the odds comprising at least: first odds for a first betting option, and second odds for a second betting option. *See, e.g., Specification* page 6, lines 3-13; page 9, lines 4-24; page 12, lines 24-29; page 21, line 24 to page 23, line 2; and Fig. 4, element 204. The method also includes determining that a combination of at least the first odds and the second odds at least approximates the desired odds. *See, e.g., Specification* page 6, line 14 to page 7, line 2; page 12, line 30 to page 13, line 13; page 15, line 1 to page 16, line 2; page 16, line 30 to page 17, line 15; page 17, line 23 to page 18, line 2; page 21, line 24 to page 23, line 2; page 23, line 12 to page 24, line 2; Fig. 2; Figs. 3A-3B; Fig. 4, element 206; and Fig. 5. The method further includes establishing for the bettor, based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, at least: a first bet on the first betting option, and a second bet on the second betting option. *See, e.g., Specification* page 8, lines 16-24; page 18, lines 3-12; page 21, line 24 to page 23, line 2; Figs. 3A-3B, elements 158 and 160; and Fig. 4, element 208.

D. Independent Claim 36

Independent claim 36 is directed at an apparatus that comprises at least one processor having instructions associated therewith. *See, e.g., Specification* page 12, line 24 to page 13, line 13; and Fig. 1, elements 16, 38, and 42. The instructions, when executed by the processor, make the processor operable to receive from a bettor a wager on an event, the wager comprising a first betting option at desired odds, and in which the event comprises a plurality of participants and a plurality of betting options including the first betting option. *See, e.g., Specification* page 6, line 3 to page 7, line 17; page 7, line 31 to page 8, line 15; page 9, line 25 to page 10, line 7; page 12, lines 24-29; page 21, line 24 to page 22, line 9; page 23, lines 12-20; Fig. 1, element 12; and Fig. 4, element 200. The instructions, when executed by the processor, also make the processor operable to determine odds for the plurality of betting options, the odds comprising at least: first odds for the first betting option, and second odds for a second betting option. *See, e.g., Specification* page 6, lines 3-13; page 9, lines 4-24; page 12, lines 24-29; page 21, line 24 to page 23, line 2; and Fig. 4, element 204. The instructions, when executed by the processor, also make the processor operable to determine that at least the second odds in combination with the first odds at least approximates the desired odds. *See, e.g., Specification* page 6, line 14 to page 7, line 2; page 12, line 30 to page 13, line 13; page 15, line 1 to page 16, line 2; page 16, line 30 to page 17, line 15; page 17, line 23 to page 18, line 2; page 21, line 24 to page 23, line 2; page 23, line 12 to page 24, line 2; Fig. 2; Figs. 3A-3B; Fig. 4, element 206; and Fig. 5. The instructions, when executed by the processor, also make the processor operable to establish for the bettor, based at least in part on determining that at least the second odds in combination with the first odds at least approximates the desired odds, at least: a first bet on the first betting option at the first odds, and a second bet on the second betting option at the second odds. *See, e.g., Specification* page 8, lines 16-24; page 18, lines 3-12; page 21, line 24 to page 23, line 2; Figs. 3A-3B, elements 158 and 160; and Fig. 4, element 208.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are whether:

- Dependent claims **9** and **43** are indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Final Office Action, page 3.
- Independent claims **1, 13, 25, and 36**, and dependent claims **3, 8-10, 12, 14-15, 19-20, 22-24, 26, 30, 33, 35, 37, 41, 43-44, and 46-72** are anticipated under 35 U.S.C. § 102(b) by Brenner et al, U.S. Patent No. 5,830,068 (hereinafter, Brenner). Final Office Action, paragraphs 1-5, pages 3-5.

VII. ARGUMENT

A. Summary of Argument

Dependent claims **9** and **43** are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Final Office Action, page 3. Specifically, the Examiner appears to be of the opinion that claims **9** and **43** each recites two mutually exclusive conditions under which different actions are performed, and that each claim recites the simultaneous execution of the different actions, which is not possible given the mutually exclusive conditions. *Id.* However, claims **9** and **43** are apparatus claims. As one of ordinary skill in the art would understand, an apparatus can have instructions capable of performing one action under one condition, and instructions capable of performing another action under a different mutually exclusive condition. While the apparatus includes instructions for both actions, the apparatus does not simultaneously execute both instructions. Claims **9** and **43** are apparatus claims of such a form. In particular, claims **9** and **43** each recites instructions capable of performing one action under one condition, and instructions capable of performing another action under another condition, which instructions/actions are never run simultaneously. Accordingly, claims **9** and **43** are not indefinite.

Independent claims **1**, **13**, **25**, and **36** are rejected under 35 U.S.C. § 102(b) as being anticipated by Brenner. Final Office Action, paragraphs 1-2, pages 3-4. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of these claims. In particular, in rejecting these claims the Examiner makes conclusory assertions on how a gambler places bets. *See Id.* All factual findings of the Patent and Trademark Office must be supported by substantial evidence of record. However, the record is devoid of any evidence to support the Examiner's various assertions. Without evidence of record, the Examiner's various assertions are insufficient to establish a *prima facie* case of unpatentability.

In addition, because the Examiner's rejection of these claims is based purely on conclusory assertions, the Examiner makes no attempt to show that Brenner discloses certain limitations of these claims. *See Id.* In addition, the Examiner also ignores certain claim limitations, never discussing the limitations. *See Id.* Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims **1**, **13**, **25**, and **36**. *See Id.* For at least these

reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of independent claims **1, 13, 25, and 36**. The rejection of these claims (and the claims that depend there from) is thereby improper.

Dependent claims **3, 9-10, 15, 20, 26, 33, 37, 43-44, 47-48, 51-52, 56-61, and 64-72** are also rejected under 35 U.S.C. § 102(b) as being anticipated by Brenner. Final Office Action, paragraphs 1-5, pages 3-5. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of these claims. Specifically, in rejecting these claims the Examiner makes no attempt to show that Brenner discloses certain limitations of the claims and/or ignores certain claim limitations, never discussing the limitations. *See Id.* Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include features of these claims. *See Id.* For at least these reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of dependent claims **3, 9-10, 15, 20, 26, 33, 37, 43-44, 47-48, 51-52, 56-61, and 64-72**. The rejection of these claims (and the claims that depend there from) is thereby improper.

B. Rejection Under 35 U.S.C. § 112, Second Paragraph

1. Legal Standard for Indefiniteness under 35 U.S.C. § 112, Second Paragraph

Under 35 U.S.C. § 112, second paragraph, the:

requirement to ‘distinctly’ claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles.... Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.

Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354, 1366 (Fed. Cir. 2004); *See MPEP* § 2173.02.

2. First Group: Claims 9 and 43 – No Prima Facie Showing of Indefiniteness

a. The Examiner fails to show that claims 9 and 43 are indefinite.

The Examiner fails to show that dependent claims **9** and **43** are indefinite.

Dependent claim **9** is representative of the group and together with claim **1**, from which it depends, recites in part:

An apparatus comprising at least one processor having instructions associated therewith that when executed make the processor operable to: ...

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds [as received from a bettor]; and

d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:

*a first bet on the first betting option, and
a second bet on the second betting option....*

in which the instructions, that when executed, make the processor further operable to:

determine that no combination of the determined odds at least approximates the desired odds; and

based at least in part on determining that no combination of the determined odds at least approximates the desired odds, establish for the bettor a third bet on one of the plurality of betting options at the determined odds for that betting option.

In rejecting claim 9 (and similarly claim 43), the Examiner is of the opinion that:

... A third bet is placed when 'no combination of the determined odds at least approximates the desired odds' however the independent claim ends with the placing of a first and second bet. Therefore preventing this situation from ever occurring and if this situation does occur then the dependent claim's bet is a first bet not a third bet. In other words, the scope of the dependent claims is lost because of the vagueness in combination with taking into consideration the independent claims. Final Office Action, page 3.

The Examiner fails to show that one of ordinary skill in the art would find claim 9 (and similarly claim 43) insolubly ambiguous without a discernible meaning.

In particular, the Examiner appears to be of the opinion that claim 9 (and similarly claim 43) recites two mutually exclusive conditions under which different actions (e.g. establish first and second bets, or establish a third bet) are performed, and that the claim recites the simultaneous execution of the different actions, which is not possible given the mutually exclusive conditions. Id.

Applicants note that claim 9 (and similarly claim 43) is an apparatus claim, not a method claim. As one of ordinary skill in the art would understand, an apparatus can have instructions capable of performing one action under one condition, and instructions capable of performing another action under a different mutually exclusive condition. However, the apparatus does not simultaneously execute both instructions. For example, a traffic light is an apparatus that has instructions to make the light red and instructions to make the light green. The traffic light never runs both instructions at the same time (the conditions under which they run being mutually exclusive). However, the traffic light certainly includes both instructions.

Claim 9 (and similarly claim 43) is of similar construction. It is an apparatus claim that has instructions capable of establishing first and second bets under one condition, and instructions capable of establishing a third bet under another mutually exclusive condition. Like a traffic light, claim 9 (and similarly claim 43) includes both instructions, but does not require simultaneous execution of the instructions. In particular, the limitations of claim 9 (and similarly claim 43) recite that the instructions capable of establishing the first and second bets, and the instructions capable of establishing the third bet are never run simultaneously.

Furthermore, regarding the use of the terms “first,” “second,” and “third” as recited by claim 9, these terms are merely modifiers to distinguish between the different bets recited by the claim, and the Examiner has not shown that one of ordinary skill in the art would interpret claim 9 differently.

For at least the foregoing reasons, the rejection of claims 9 and 43 is improper.

C. Rejection Under 35 U.S.C. § 102(b) as being anticipated by Brenner

1. Legal Standard for Anticipation under 35 U.S.C. § 102

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more, the Applicants are entitled to grant of the patent. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

To reject claims under 35 U.S.C. § 102, an Examiner must show that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); *See Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002). “The

identical invention must be shown in as complete detail as is contained in the ... claim."

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Furthermore, in rejecting a claim, an Examiner must support all factual findings with substantial evidence of record. In re Lee, 277 F.3d 1338, 1342 (Fed. Cir. 2002); In re Zurko, 258 F.3d 1379, 1383-1386 (Fed. Cir. 2001). Factual findings unsupported by substantial evidence or record are insufficient to establish a *prima facie* case of unpatentability.

2. Legal Standard for Obviousness under 35 U.S.C. § 103

To reject claims under 35 U.S.C. § 103, an Examiner must show an unrebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981 (CCPA 1974). In addition, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference. If an Examiner fails to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned. In re Rijckaert, 9 F.3d 1531, 1532 (Fed. Cir. 1993); Novamedix Distrib. Ltd. v. Dickinson, 175 F.Supp. 2d 8, 9 (D.D.C. 2001).

3. Second Group: Claims 1, 3, 8-10, 12, and 47-59 – No Prima Facie Showing of Anticipation

a. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claim 1.

The Examiner fails to show that all limitations of independent claim 1 are taught or suggested by Brenner.

Independent claim 1 recites in part:

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds [as received from a bettor]; and

d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:

*a first bet on the first betting option, and
a second bet on the second betting option. (emphasis added).*

In rejecting claim 1, the Examiner is of the opinion that:

When a user chooses to place an Exacta, Quinella, Trifecta or Daily Double, he or she will have to create a subset of participants that will all finish in one of the winning positions. Therefore, a gambler has the power to customize the odds of his/her bet by choosing between a 'combination bet' such as: Exacta, Quinella, Trifecta or Daily Double, or multiple single bets such as: Place bets for each horse ... when the risk level is too high or more than the desired odds. **The Examiner views a gambler's decision of placing multiple single bets over a riskier 'combination bet' as making a first and second betting option to achieve the desired odds ... based on the combination of the first and second odds.** Final Office Action, paragraph 2, page 4. (emphasis added).

The Examiner's rejection is flawed for numerous reasons. First, all factual findings of the Patent and Trademark Office must be supported by substantial evidence of record. On the contrary, the Examiner merely makes conclusory assertions on how a gambler places bets, without providing any evidence in the record to support these assertions. *Id.* In particular, the Examiner is of the opinion that a gambler places a plurality of bets on an event for the purpose of synthesizing some desired odds that the gambler seeks. However, the record is devoid of any evidence to support the Examiner's assertions that a gambler bets in this fashion. Furthermore, evidence shows that gamblers place particular bets not to synthesize desired odds, but for other reasons, such as based on handicapping data, appearance of a horse, which horse is the favorite, lucky numbers, and horse and jockey names. See, e.g., Brenner, column 14, lines 19-67 and column 25, lines 11-55 (discussing the use of handicapping data by a bettor). See also Section **IX. Evidence Appendix**: a) Reference entitled "Beginners Corner" (discussing betting using, for example, handicapping, and also discussing beginner methods including, for example, betting on the favorite or based on the appearance of a horse); b) Reference entitled "Book Review: Betting the Kentucky Derby" (discussing betting using, for example, handicapping, and also discussing beginner methods including, for example, betting based on lucky numbers, birthdays, horse names, and jockey names); and c) Reference entitled "How to Pick a Winning Horse at the Race Track" (discussing betting by eliminating horses not to bet on).

Notably, the Examiner is also of the opinion that a gambler, having desired odds in mind, actually goes through the computational arithmetic of trying various combinations of odds of various available betting options until that gambler is able to find some combination that actually

results in the gambler's desired odds. However, the record is again devoid of any evidence to support the Examiner's assertions. Without evidence of record, the Examiner's various assertions are insufficient to establish a *prima facie* case of unpatentability.

Second, assuming, *arguendo*, that the Examiner may be equating the features of claim 1 to a gambler choosing participants for an Exacta type bet, for example, such actions by a gambler are not claim 1. Specifically, merely choosing participants for a bet is not “*determin[ing] that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds*” as received from a bettor, as claim 1 recites.

Third, because the Examiner's rejection is based purely on conclusory assertions on how a gambler may bet, the Examiner makes no attempt to show that the Brenner system “*determine[s] that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds*” as received from a bettor, and then based on this determination “*establish[es] for the bettor at least: a first bet on the first betting option, and a second bet on the second betting option,*” as claim 1 recites. See Id. Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of claim 1 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the above features of claim 1. See Id. Accordingly, if the Examiner was attempting to reject claim 1 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 1. The rejection of independent claim 1 (and claims 3, 8-10, 12, and 47-59, which depend there from) is thereby improper.

- b. The Examiner ignores limitations of claim 1, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of independent claim 1 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Independent claim 1 further recites in part:

- a) receive from a bettor a wager on an event ...; ... and*

*d) ... establish for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option.*

The Examiner rejects claim 1 using the same argument presented by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

The Examiner is of the opinion that the Brenner system allows a gambler to place a plurality of bets. *Id.* However, in the rejection the Examiner never discusses “*receiv[ing] from a bettor a wager on an event*” and in response to receiving that wager, “*establish[ing] for the bettor at least: a first bet on [a] first betting option, and a second bet on [a] second betting option,*” as claim 1 recites. See *Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 1. Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claim 1 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the above features of claim 1. See *Id.* Accordingly, if the Examiner was attempting to reject claim 1 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 1. The rejection of independent claim 1 (and claims 3, 8-10, 12, and 47-59, which depend there from) is thereby improper.

4. Third Group: Claims 25-26, 30, 33, 35, and 60-66 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

a. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claim 25.

The Examiner fails to show that all limitations of independent claim 25 are taught or suggested by Brenner.

Independent claim 25 recites in part:

c) determining that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds [as received from a bettor]; and

d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establishing for the bettor at least:

*a first bet on the first betting option, and
a second bet on the second betting option. (emphasis added).*

The Examiner rejects claim 25 using the same argument as presented by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

The above limitations of claim 25 are similar to limitations of claim 1 as discussed by Applicants under subsection VII.C.3.a. Accordingly, Applicants repeat herein Applicants response as set forth under subsection VII.C.3.a.

For at least the reasons set forth under subsection VII.C.3.a, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 25. The rejection of claim independent 25 (and claims 26, 30, 33, 35, and 60-66, which depend there from) is thereby improper.

b. The Examiner ignores limitations of claim 25, thereby failing to show that Brenner teaches, let alone suggests, such limitations.

The Examiner fails to address all limitations of independent claim 25 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Independent claim 25 further recites in part:

a) receiving from a bettor a wager on an event ...; ... and

*d) ... establishing for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option.*

The Examiner rejects claim **25** using the same argument as presented by Applicants under subsection **VII.C.3.a**. Accordingly, see that subsection for the rejection. *See also* Final Office Action, paragraph 2, page 4.

The above limitations of claim **25** are similar to limitations of claim **1** as discussed by Applicants under subsection **VII.C.3.b**. Accordingly, Applicants repeat herein Applicants response as set forth under subsection **VII.C.3.b**.

For at least the reasons set forth under subsection **VII.C.3.b**, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim **25**. The rejection of independent claim **25** (and claims **26, 30, 33, 35**, and **60-66**, which depend there from) is thereby improper.

5. Fourth Group: Claims 36-37, 41, 43-44, 46, and 67-72 – No Prima Facie Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

a. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claim 36.

The Examiner fails to show that all limitations of independent claim **36** are taught or suggested by Brenner.

Independent claim **36** recites in part:

c) determine that at least ... second odds [for a second betting option] in combination with ... first odds [for a first betting option] at least approximates ... desired odds [as received from a bettor]; and

*d) based at least in part on determining that at least the second odds in combination with the first odds at least approximates the desired odds, establish for the bettor at least:
a first bet on the first betting option at the first odds, and
a second bet on the second betting option at the second odds.
(emphasis added).*

The Examiner rejects claim 36 using the same argument as presented by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

As similarly discussed by Applicants under subsection VII.C.3.a, the Examiner's rejection is flawed for numerous reasons. First, the Examiner's rejection is based on conclusory assertions on how a gambler places bets. *Id.* However, as discussed by Applicants under subsection VII.C.3.a, the record is devoid of any evidence to support the Examiner's various assertions. Without evidence of record, the Examiner's various assertions are insufficient to establish a *prima facie* case of unpatentability.

Second, assuming, *arguendo*, that the Examiner may be equating the features of claim 36 to a gambler choosing participants for an Exacta type bet, for example, such actions by a gambler are not claim 36. Specifically, merely choosing participants for a bet is not "*determin[ing] that at least ... second odds [for a second betting option] in combination with ... first odds [for a first betting option] at least approximates ... desired odds*" as received from a bettor, as claim 36 recites.

Third, because the Examiner's rejection is based purely on conclusory assertions on how a gambler may bet, the Examiner makes no attempt in the rejection to show that the Brenner system "*determine[s] that at least ... second odds [for a second betting option] in combination with ... first odds [for a first betting option] at least approximates ... desired odds*" as received from a bettor, and then based on this determination, "*establish[es] for the bettor at least: a first bet on the first betting option at the first odds, and a second bet on the second betting option at the second odds,*" as claim 36 recites. See *Id.* Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of claim 36 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the above features of claim 36. See *Id.* Accordingly, if the Examiner was attempting to reject claim 36 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 36. The rejection of independent claim 36 (and claims 37, 41, 43-44, 46, and 67-72, which depend there from) is thereby improper.

b. The Examiner ignores limitations of claim 36, thereby failing to show that Brenner teaches, let alone suggests, such limitations.

The Examiner fails to address all limitations of independent claim 36 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Independent claim 36 further recites in part:

- a) receive from a bettor a wager on an event, the wager comprising a first betting option ...; ... and*
- d) ... establish for the bettor at least:
a first bet on the first betting option ..., and
a second bet on [a] second betting option....*

The Examiner rejects claim 36 using the same argument as presented by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

The Examiner is of the opinion that the Brenner system allows a gambler to place a plurality of bets. *Id.* However, the Examiner never discusses in the rejection “*receiv[ing] from a bettor a wager on an event, the wager comprising a first betting option*” and in response to receiving that wager, not only “*establish[ing] for the bettor ... a first bet on the first betting option*” but also “*establish[ing] for the bettor ... a second bet on [a] second betting option,*” as claim 36 recites. Accordingly, the Examiner never shows that Brenner discloses such features of claim 36. Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claim 36 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the above features of claim 36. See *Id.* Accordingly, if the Examiner was attempting to reject claim 36 under Section 103 as being obvious over Brenner, Applicants cannot address such an

obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 36. The rejection of independent claim 36 (and claims 37, 41, 43-44, 46, and 67-72, which depend there from) is thereby improper.

6. Fifth Group: Claims 13-15, 19-20, and 22-24 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

a. *The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claim 13.*

The Examiner fails to show that all limitations of independent claim 13 are taught or suggested by Brenner.

Independent claim 13 recites in part:

... each participant associated with particular odds to finish in a particular subset of finishing positions in the event;

identifying customized odds for a bet;

selecting a plurality of participants from the field of participants such that the odds associated with each of the selected participants combines to at least approximate the customized odds for the bet;

establishing the bet on the selected participants. (emphasis added).

The Examiner rejects claim 13 using the same argument as presented by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

As similarly discussed by Applicants under subsection VII.C.3.a, the Examiner's rejection is flawed for numerous reasons. First, the Examiner's rejection is based on conclusory assertions on how a gambler places bets. *Id.* However, as discussed by Applicants under subsection VII.C.3.a, the record is devoid of any evidence to support the Examiner's various assertions. Without evidence of record, the Examiner's various assertions are insufficient to establish a *prima facie* case of unpatentability.

Second, assuming, *arguendo*, that the Examiner may be equating the features of claim 13 to a gambler choosing participants for an Exacta type bet, for example, such actions by a gambler are not claim 13. Specifically, merely choosing participants for an Exacta type bet, for example, is not “*selecting a plurality of participants ... such that the odds associated with each of the selected participants combines to at least approximate ... customized odds,*” as claim 13 recites.

Third, because the Examiner’s rejection is based purely on conclusory assertions on how a gambler may bet, the Examiner makes no attempt in the rejection to show that the Brenner system “*select[s] a plurality of participants ... such that the odds associated with each of the selected participants combines to at least approximate ... customized odds,*” as claim 13 recites. *See Id.* Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of claim 13 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the above features of claim 13. *See Id.* Accordingly, if the Examiner was attempting to reject claim 13 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 13. The rejection of independent claim 13 (and claims 14-15, 19-20, and 22-24, which depend there from) is thereby improper.

7. Sixth Group: Claims 46 and 68 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Sixth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

- a. ***The Examiner ignores limitations of claim 68, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of dependent claim 68 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Dependent claim 68, together with claim 36 from which it depends, recites in part:

a) *receive from a bettor a wager on an event, the wager comprising a first betting option ...; ... and*

d) *... establish for the bettor at least:
a first bet on the first betting option ..., and
a second bet on [a] second betting option...*

in which the first betting option comprises at least a first participant finishing the event in accordance with a type of bet.

The Examiner rejects claim 68 using the same argument as discussed by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

As similarly discussed by Applicants under subsection VII.C.5.b regarding independent claim 36, in rejecting claim 68 the Examiner never discusses “*receiv[ing] from a bettor a wager on an event,*” wherein the wager comprises “*at least a first participant finishing the event in accordance with a type of bet,*” and in response to receiving that wager, not only “*establish[ing] for the bettor ... a first bet*” on “*at least [the] first participant finishing the event in accordance with the type of bet*” but also “*establish[ing] for the bettor ... a second bet on [a] second betting option,*” as claim 68 recites. See Id. Accordingly, the Examiner never shows that Brenner discloses such features of claim 68. Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claim 68 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 68. See Id. Accordingly, if the Examiner was attempting to reject claim 68 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 68. The rejection of dependent claim 68 (and claim 46, which depends there from) is thereby improper.

8. Seventh Group: Claim 47– No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Seventh Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. In addition, the following separate arguments of patentability apply.

- a. The Examiner ignores limitations of claim 47, thereby failing to show that Brenner teaches, let alone suggests, such limitations.*

The Examiner fails to address all limitations of dependent claim 47 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Dependent claim 47, together with claim 1 from which it depends, recites in part:

a) receive from a bettor a wager on an event at desired odds...; ... and

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates the desired odds; ...

*in which the first odds are more than the desired odds, and
in which the second odds are more than the desired odds. (emphasis added).*

The Examiner rejects claim 47 using the same argument as discussed by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

In rejecting claim 47, the Examiner never discusses “the first odds [being] more than the desired odds,” and “the second odds [being] more than the desired odds,” as claim 47 recites. See Id. Accordingly, the Examiner never shows that Brenner discloses claim 47. Furthermore, Brenner does not disclose claim 47. Because the Examiner fails to show that all limitations of dependent claim 47 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 47. *See Id.* Accordingly, if the Examiner was attempting to reject claim 47 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 47. The rejection of dependent claim 47 is thereby improper.

9. Eighth Group: Claims 48-49, 60 and 67– No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Eighth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Eighth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Eighth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

a. The Examiner ignores limitations of claims 48, 60, and 67, thereby failing to show that Brenner teaches, let alone suggests, such limitations.

The Examiner fails to address all limitations of dependent claims 48, 60, and 67 and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim 48 is representative of the group and together with claim 1, from which it depends, recites in part:

a) receive from a bettor a wager on an event at desired odds...; ... and

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates the desired odds; ...

in which the first odds are different from the desired odds, and

in which *the second odds are different from the desired odds*. (emphasis added).

The Examiner rejects claim **48** (and similarly claims **60** and **67**) using the same argument as discussed by Applicants under subsection **VII.C.3.a**. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

In rejecting claims **48** (and similarly claims **60** and **67**), the Examiner never discusses “the first odds [being] different from the desired odds,” and “the second odds [being] different from the desired odds,” as claim **48** (and similarly claims **60** and **67**) recites. See *Id.* Accordingly, the Examiner never shows that Brenner discloses claim **48** (and similarly claims **60** and **67**). Furthermore, Brenner does not disclose these claims. Because the Examiner fails to show that all limitations of claims **48**, **60**, and **67** are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims **48**, **60**, and **67**. See *Id.* Accordingly, if the Examiner was attempting to reject these claims under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims **48**, **60**, and **67**. The rejection of dependent claims **48**, **60**, and **67** (and claim **49**, which depends from claim **48**) is thereby improper.

10. Ninth Group: Claim 51 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Ninth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. In addition, the following separate arguments of patentability apply.

- a. ***The Examiner ignores limitations of claims 51, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of dependent claim 51 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Dependent claim 51, together with claim 1 from which it depends, recites in part:

a) receive from a bettor a wager on an event ...; ... and

d) ... establish for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option...

in which the instructions, that when executed, make the processor further operable to select from [a] plurality of participants at least a first participant;

in which at least the first betting option is associated with at least the first participant; and

in which to establish the first bet on the first betting option further comprises to establish the first bet on the first betting option based at least in part on the first betting option being associated with at least the first participant, and the first participant having been selected from the plurality of participants. (emphasis added).

The Examiner rejects claim 51 using the same argument as discussed by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

In rejecting claim 51, the Examiner is of the opinion that the Brenner system allows a gambler to select a participant and to then place a bet on the selected participant. *Id.* However, the Examiner never discusses the limitations of claim 51 and in particular, never shows that the Brenner system “select[s] from [a] plurality of participants at least a first participant” and then establishes for the bettor the bet on the first betting option “based at least in part on ...the first participant having been selected [by the system] from the plurality of participants” and the first betting option being associated with the first participant, as claim 51 recites. See *Id.* Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claim 51 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 51. *See Id.* Accordingly, if the Examiner was attempting to reject claim 51 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 51. The rejection of claim 51 is thereby improper.

11. Tenth Group: Claims 52-53 and 61-62– No Prima Facie Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Tenth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Tenth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. In addition, the following separate arguments of patentability apply.

a. The Examiner ignores limitations of claims 52 and 61, thereby failing to show that Brenner teaches, let alone suggests, such limitations.

The Examiner fails to address all limitations of dependent claims 52 and 61 and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim 52 is representative of the group and together with claim 1, from which it depends, recites in part:

a) receive from a bettor a wager on an event ...; ... and

*d) ... establish for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option...*

in which the wager comprises a selection by the bettor of the first betting option;

in which the first betting option comprises at least a first participant finishing the event in accordance with a type of bet; and

in which to establish the first bet on the first betting option further comprises to establish the first bet on the first betting option based at least in part on the bettor having selected the first betting option.
(emphasis added).

The Examiner rejects claim **52** (and similarly claim **61**) using the same argument as discussed by Applicants under subsection **VII.C.3.a**. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

As similarly discussed by Applicants under subsection **VII.C.3.b** regarding independent claim **1** (and similarly under subsection **VII.C.4.b** regarding independent claim **25**), in rejecting claim **52** (and similarly claim **61**) the Examiner never discusses “*receiv[ing] from a bettor a wager on an event,*” in which “*the wager comprises a selection by the bettor of the first betting option*” and in response to receiving that wager, not only “*establish[ing] for the bettor ... a first bet on the first betting option based at least in part on the bettor having selected the first betting option*” but also “*establish[ing] for the bettor ... a second bet on [a] second betting option,*” as claim **52** (and similarly claim **61**) recites. See Id. Accordingly, the Examiner never shows that Brenner discloses such features of claim **52** (and similarly claim **61**). Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claims **52** and **61** are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims **52** and **61**. See Id. Accordingly, if the Examiner was attempting to reject claims **52** and **61** under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims **52** and **61**. The rejection of dependent claims **52** and **61** (and claims **53** and **62**, which depend respectively from claims **52** and **61**) is thereby improper.

12. Eleventh Group: Claims 56 and 69 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Eleventh Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Eleventh Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

- a. The Examiner ignores limitations of claims 56 and 69, thereby failing to show that Brenner teaches, let alone suggests, such limitations.*

The Examiner fails to address all limitations of dependent claims 56 and 69 and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim 56 is representative of the group and together with claim 1, from which it depends, recites in part:

a) receive from a bettor a wager on an event ...; ... and

*d) ... establish for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option...*

in which the wager comprises a winning wager when a result of the event comprises any of:

*the first betting option, and
the second betting option.*

The Examiner rejects claim 56 (and similarly claim 69) using the same argument as discussed by Applicants under subsection VII.C.3.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 2, page 4.

In rejecting claim 56 (and similarly claim 69), the Examiner never discusses “*receiv[ing] from a bettor a wager on an event,*” in which that wager is “*a winning wager when a result of the event comprises any of: [a] first betting option, and [a] second betting option,*” as claim 56 (and similarly claim 69) recites. See *Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 56 (and similarly claim 69). Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claims 56 and

69 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 56 and 69. See *Id.* Accordingly, if the Examiner was attempting to reject claims 56 and 69 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 56 and 69. The rejection of dependent claims 56 and 69 is thereby improper.

13. Twelfth Group: Claims 3, 26, 37, 57, 64, and 70 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Twelfth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Twelfth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Twelfth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

- a. *The Examiner ignores limitations of claims 3, 26, and 37, thereby failing to show that Brenner teaches, let alone suggests, such limitations.*

The Examiner fails to address all limitations of dependent claims 3, 26, and 37 and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim 3 is representative of the group and together with claim 1, from which it depends, recites in part:

- a) *receive from a bettor a wager on an event ...; ... and*
d) *... establish for the bettor at least:
a first bet on [a] first betting option, and
a second bet on [a] second betting option...*

based at least in part on a result of the event comprising any of the first betting option and the second betting option, determine that the wager comprises a winning wager.....

In rejecting claim 3 (and similarly claims 26 and 37), the Examiner states:

[T]he Examiner views the terms total return and target percentage as analogous terms with payoff. The prior art displays to a gambler the payoff values of a wager amount for every available betting type Therefore allowing a gambler to determine the payoff amount or percentage for a first, second and first in combination of second odds. As stated above, placing a 'combination bet' or multiple single bets require selecting from a plurality of participants. Furthermore, these participant selections are made based on the current odds and payoff values ... or the target percentage. Final Rejection, paragraph 3, page 4.

In the rejection, the Examiner never discusses “*receiv[ing] from a bettor a wager on an event,*” and “*based at least in part on a result of the event comprising any of [a] first betting option and [a] second betting option, determin[ing] that the wager comprises a winning wager,*” as claim 3 (and similarly claims 26 and 37) recites. *See Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 3 (and similarly claims 26 and 37). Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claims 3, 26, and 37 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 3, 26, and 37. *See Id.* Accordingly, if the Examiner was attempting to reject claims 3, 26, and 37 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 3, 26, and 37. The rejection of dependent claims 3, 26, and 37 (and claims 57, 64, and 70, which depend respectively from claims 3, 26, and 37) is thereby improper.

14. Thirteenth Group: Claims 57, 64, and 70 – No *Prima Facie* Showing of Anticipation**SEPARATE ARGUMENT OF PATENTABILITY**

The Thirteenth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Thirteenth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Thirteenth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. The Thirteenth Group is a subset of the Twelfth Group and is therefore patentable for the reasons set forth above for the Twelfth Group. In addition, the following separate arguments of patentability apply.

- a. The Examiner ignores limitations of claims 57, 64, and 70, thereby failing to show that Brenner teaches, let alone suggests, such limitations.*

The Examiner fails to address all limitations of dependent claims **57, 64, and 70** and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim **57** is representative of the group and together with claims **1** and **3**, from which it depends, recites in part:

a) receive from a bettor a wager on an event at desired odds ...; ... and

*d) ... establish for the bettor at least:
a first bet on [a] first betting option [at first odds different from the desired odds], and
a second bet on [a] second betting option [at second odds different from the desired odds]...*

based at least in part on a result of the event comprising any of the first betting option and the second betting option, determine that the wager comprises a winning wager; and

based at least in part on determining that the wager comprises the winning wager, determine a total return for the wager...

*in which the total return at least approximates the desired odds.
(emphasis added).*

The Examiner rejects claim 57 (and similarly claims 64 and 70) using the same argument as discussed by Applicants under subsection VII.C.13.a.¹ Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 3, page 4.

The Examiner's rejection of claim 57 (and similarly claims 64 and 70) is flawed for numerous reasons. Specifically, in one aspect, the Examiner states that the Brenner system allows a gambler "to determine the payoff amount ... for a first, second and first in combination of second odds." Id. The Examiner also states that "participant selections are made based on the current odds and payoff values." Id. However, the Examiner never correlates such alleged features of Brenner to the limitations of claim 57 (and similarly claims 64 and 70) or in other words, never discusses the limitations of claim 57 (and similarly claims 64 and 70). As such, the Examiner never shows that the Brenner system "establish[es] for [a] bettor at least: a first bet on [a] first betting option [at first odds different from the desired odds], and a second bet on [a] second betting option [at second odds different from the desired odds]," such that when "a result of the event compris[es] any of the first betting option and the second betting option," "the total return [for the wager] at least approximates the desired odds," as claim 57 (and similarly claims 64 and 70) recites. See Id. Furthermore, Brenner does not disclose such features.

In another aspect, the Examiner appears to be of the opinion that when betting, a gambler seeks a target payoff amount, goes through the computational arithmetic of trying various combinations of payoffs of various available betting options until the gambler is able to find some combination of betting options that actually results in the gambler's target payoff amount, and that the gambler then bets accordingly. See Id. Again, all factual findings of the Patent and Trademark Office must be supported by substantial evidence of record. However, the record is devoid of any evidence to support any such alleged assertions of the Examiner. Id. Without evidence of record, any such alleged assertions are insufficient to establish a *prima facie* case of unpatentability.

Because the Examiner fails to show that all limitations of claims 57, 64 and 70 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

¹ The Examiner lists claim 64 under paragraph 2, page 4 of the Final Office Action. Claim 64 recites similar limitations to claims 57 and 70, which are listed under paragraph 3, page 4 of the Final Office Action. In addition, claim 64 recites a "total return," which the Examiner mentions under paragraph 3 and not under paragraph 2. Accordingly, Applicants will proceed under the assumption that the Examiner intended to list claim 64 under paragraph 3, page 4 of the Final Office Action, and not paragraph 2.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 57, 64 and 70. *See Id.* Accordingly, if the Examiner was attempting to reject these claims under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 57, 64, and 70. The rejection of dependent claims 57, 64, and 70 is thereby improper.

15. Fourteenth Group: Claim 15 – No *Prima Facie* Showing of Anticipation
SEPARATE ARGUMENT OF PATENTABILITY

The Fourteenth Group is a subset of the Fifth Group and is therefore patentable for the reasons set forth above for the Fifth Group. In addition, the following separate arguments of patentability apply.

a. *The Examiner ignores limitations of claim 15, thereby failing to show that Brenner teaches, let alone suggests, such limitations.*

The Examiner fails to address all limitations of dependent claim 15 and thereby fails to show that all limitations of this claim are taught or suggested by Brenner.

Dependent claim 15, together with claim 13 from which it depends, recites in part:

... each participant associated with particular odds to finish in a particular subset of finishing positions in the event;

identifying customized odds for a bet;

selecting a plurality of participants from the field of participants such that the odds associated with each of the selected participants combines to at least approximate the customized odds for the bet;

establishing the bet on the selected participants...

paying a total return associated with the bet, wherein the total return is based at least in part upon the customized odds. (emphasis added)

The Examiner rejects claim 15 using the same argument as discussed by Applicants under subsection VII.C.13.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 3, page 4.

As similarly discussed by Applicants under subsection VII.C.14.a, the Examiner's rejection of claim 15 is flawed for numerous reasons. Specifically, in the rejection the Examiner discusses alleged features of Brenner including, for example, that "participant selections are made based on the current odds and payoff values." *Id.* However, the Examiner never correlates such alleged features of Brenner to the limitations of claim 15 or in other words, never discusses the limitations of claim 15. Accordingly, the Examiner never shows that the Brenner system "select[s] a plurality of participants ... such that the odds associated with each of the selected participants combines to at least approximate ... customized odds," and then "establishes the bet on the selected participants" such that a "total return [associated with the bet] is based at least in part upon the customized odds," as claim 15 recites. See *Id.* Furthermore, Brenner does not disclose such features.

Similarly, the record is devoid of any evidence to support any alleged assertions by the Examiner on how a gambler may seek a target payoff amount when betting, as similarly discussed by Applicants under subsection VII.C.14.a. Without evidence of record, any such alleged assertions are insufficient to establish a *prima facie* case of unpatentability.

Because the Examiner fails to show that all limitations of claim 15 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 15. See *Id.* Accordingly, if the Examiner was attempting to reject this claim under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 15. The rejection of dependent claim 15 is thereby improper.

16. Fifteenth Group: Claims 10, 33, and 44 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Fifteenth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Fifteenth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Fifteenth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

a. *The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claims 10, 33, and 44.*

The Examiner fails to show that all limitations of dependent claims **10, 33, and 44** are taught or suggested by Brenner.

Dependent claim **10** is representative of the group and together with claim **1**, from which it depends, recites in part:

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds [as received from a bettor]; and

d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:

*a first bet on the first betting option, and
a second bet on the second betting option...*

determine a target percentage based at least in part on the desired odds and a takeout associated with the wager;

determine a first percentage for the first odds [of the first betting option]; and

determine a second percentage for the second odds [of the second betting option]; and

in which to determine that the combination of at least the first odds and the second odds at least approximates the desired odds comprises to determine that at least the first percentage and the second percentage at least approximates the target percentage. (emphasis added).

The Examiner rejects claim 10 (and similarly claims 33 and 44) using the same argument as discussed by Applicants under subsection VII.C.13.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 3, page 4.

The Examiner's rejection of claim 10 (and similarly claims 33 and 44) is flawed for numerous reasons. In particular, as similarly discussed by Applicants under subsection VII.C.14.a, in rejecting claim 10 the Examiner appears to be of the opinion that when betting, a gambler seeks a target payoff amount (which the Examiner equates with a target percentage), goes through the computational arithmetic of trying various combinations of payoffs of various available betting options until the gambler is able to find some combination of betting options that actually results in the gambler's target payoff amount, and that the gambler then bets accordingly. See *Id.* Again, all factual findings of the Patent and Trademark Office must be supported by substantial evidence of record. However, the record is devoid of any evidence to support any such alleged assertions of the Examiner. *Id.* Without evidence of record, any such alleged assertions are insufficient to establish a *prima facie* case of unpatentability.

Furthermore, because the Examiner's rejection is based purely on conclusory assertions on how a gambler may bet, the Examiner makes no attempt to show that the Brenner system "determine[s] a target percentage based at least in part on the desired odds and a takeout associated with the wager; determine[s] a first percentage for the first odds [of the first betting option]; ... determine[s] a second percentage for the second odds [of the second betting option]; ... determine[s] that at least the first percentage and the second percentage at least approximates the target percentage," and then based on these determinations establishes for the bettor at least the first bet on the first betting option, and the second bet on the second betting option," as claim 10 (and similarly claims 33 and 44) recites. See *Id.* Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of claims 10, 33, and 44 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 10, 33, and 44. See *Id.* Accordingly, if the Examiner was attempting to reject these claims under Section 103 as being obvious over Brenner, Applicants cannot address such an

obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims **10, 33, and 44**. The rejection of dependent claims **10, 33, and 44** is thereby improper.

17. Sixteenth Group: Claim 22 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Sixteenth Group is a subset of the Fifth Group and is therefore patentable for the reasons set forth above for the Fifth Group. In addition, the following separate arguments of patentability apply.

a. *The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claim 22.*

The Examiner fails to show that all limitations of dependent claim **22** are taught or suggested by Brenner.

Dependent claim **22**, together with claim **13** from which it depends, recites in part:

selecting a plurality of participants from the field of participants such that ... odds associated with each of the selected participants combines to at least approximate ... customized odds for the bet;

establishing the bet on the selected participants ...

determining a target percentage based at least in part upon the customized odds for the bet and a takeout associated with the bet, and wherein selecting a plurality of participants from the field of participants further comprises selecting a plurality of participants based at least in part upon the target percentage. (emphasis added).

The Examiner rejects claim **22** using the same argument as discussed by Applicants under subsection **VII.C.13.a**. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 3, page 4.

The Examiner's rejection of claim **22** is flawed for numerous reasons. In particular, as similarly discussed by Applicants under subsections **VII.C.14.a** and **VII.C.16.a**, in rejecting claim **22** the Examiner appears to make various assertions on how a gambler seeks a target

payoff amount (which the Examiner equates with a target percentage) when betting. *See Id.* However, as also discussed by Applicants in those subsections, the record is devoid of any evidence to support any such alleged assertions of the Examiner. *Id.* Without evidence of record, any such alleged assertions are insufficient to establish a *prima facie* case of unpatentability.

Furthermore, because the Examiner's rejection is based purely on conclusory assertions on how a gambler may bet, the Examiner makes no attempt to show that the Brenner system "determin[es] a target percentage based at least in part upon the customized odds for the bet and a takeout associated with the bet, ...select[s] a plurality of participants based at least in part upon the target percentage," and then establishes the bet on the selected participants, as claim 22 recites. *See Id.* Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of claim 22 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 22. *See Id.* Accordingly, if the Examiner was attempting to reject claim 22 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 22. The rejection of dependent claim 22 is thereby improper.

18. Seventeenth Group: Claims 58, 65, and 71 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Seventeenth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Seventeenth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Seventeenth Group is a subset of the Fourth Group and is therefore patentable for the reasons set

forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

- a. *The Examiner ignores limitations of claims 58, 65, and 71, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of dependent claims **58, 65, and 71** and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim **58** is representative of the group and together with claim **8**, from which it depends, recites in part:

in which the wager comprises a bet amount; and

in which the instructions, that when executed, make the processor further operable to:

*allocate a first portion of the bet amount to the first bet; and
allocate a second portion of the bet amount to the second bet...*

*in which the first portion allocated to the first bet comprises a first amount **that is determined based at least in part on the first odds for the first betting option**; and*

*in which the second portion allocated to the second bet comprises a second amount **that is determined based at least in part on the second odds for the second betting option**. (emphasis added).*

In rejecting claim **58** (and similarly claims **65**² and **71**), the Examiner states:

When a gambler using the system places one or multiple bets, the funds required to complete the transaction are debited from the gambler's account ..., therefore allocating a portion of the gambler's funds ... to each of the selected participants. Final Office Action, paragraph 4, page5.

In the rejection, the Examiner never discusses "*in which the first portion [of the bet amount] allocated to the first bet comprises a first amount that is determined based at least in part on the first odds for the first betting option; and in which the second portion [of the bet amount] allocated to the second bet comprises a second amount that is determined based at least*

² The Examiner never lists claim 65 under any of paragraphs 2-5, pages 4-5 of the Final Office Action. Claim 65 recites similar limitations to claims 58 and 71, which are listed under paragraph 4, page 5 of the Final Office Action. Accordingly, Applicants will proceed under the assumption that the Examiner intended to list claim 65 under paragraph 4, page 5 of the Final Office Action.

in part on the second odds for the second betting option,” as claim 58 (and similarly claims 65 and 71) recites. *See Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 58 (and similarly claims 65 and 71). Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claims 58, 65 and 71 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 58, 65, and 71. *See Id.* Accordingly, if the Examiner was attempting to reject these claims under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 58, 65, and 71. The rejection of dependent claims 58, 65, and 71 is thereby improper.

19. Eighteenth Group: Claim 20 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Eighteenth Group is a subset of the Fifth Group and is therefore patentable for the reasons set forth above for the Fifth Group. In addition, the following separate arguments of patentability apply

- a. *The Examiner ignores limitations of claim 20, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of dependent claim 20 and thereby fails to show that all limitations of this claims are taught or suggested by Brenner.

Dependent claim 20, together with claim 14 from which it depends, recites in part:

wherein the bet is associated with a bet amount ...

allocating a portion of the bet amount to each of the selected participants, wherein the allocation is based at least in part upon the odds associated with each of the selected participants. (emphasis added).

The Examiner rejects claim 20 using the same argument as discussed by Applicants under subsection VII.C.18.a. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 4, page 5.

In the rejection, the Examiner never discusses the limitations of claim 20 and in particular, never discusses “*allocating a portion of the bet amount to each of the selected participants, wherein the allocation is based at least in part upon the odds associated with each of the selected participants.*” See *Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 20. Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claim 20 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of this claim.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claim 20. See *Id.* Accordingly, if the Examiner was attempting to reject claim 20 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claim 20. The rejection of dependent claim 20 is thereby improper.

20. Nineteenth Group: Claims 59, 66, and 72 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Nineteenth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Nineteenth Group is a subset of the Third Group and is therefore patentable for the reasons set forth above for the Third Group. The Nineteenth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the Fourth Group. In addition, the following separate arguments of patentability apply.

- a. ***The Examiner ignores limitations of claims 59, 66, and 72, thereby failing to show that Brenner teaches, let alone suggests, such limitations.***

The Examiner fails to address all limitations of dependent claims **59, 66, and 72** and thereby fails to show that all limitations of these claims are taught or suggested by Brenner.

Dependent claim **59** is representative of the group and together with claim **8**, from which it depends, recites in part:

in which the wager comprises a bet amount; and

in which the instructions, that when executed, make the processor further operable to:

*allocate a first portion of the bet amount to the first bet; and
allocate a second portion of the bet amount to the second bet...*

in which the wager comprises a winning wager when a result of the event comprises any of:

*the first betting option, and
the second betting option;*

*in which the first portion allocated to the first bet is such that when the result of the event comprises the first betting option, a total return to the bettor comprises an amount that at least approximates the desired odds;
and*

in which the second portion allocated to the second bet is such that when the result of the event comprises the second betting option, the total return to the bettor comprises an amount that at least approximates the desired odds. (emphasis added).

The Examiner rejects claim **59** (and similarly claims **66** and **72**) using the same argument as discussed by Applicants under subsection **VII.C.18.a**. Accordingly, see that subsection for the rejection. See also Final Office Action, paragraph 4, page 5.

In the rejection, the Examiner never discusses the limitations of claim **59** (and similarly claims **66** and **72**) and in particular, never discusses “*in which the first portion [of the bet amount] allocated to the first bet is such that when the result of the event comprises the first betting option, a total return to the bettor comprises an amount that at least approximates the desired odds; and in which the second portion [of the bet amount] allocated to the second bet is such that when the result of the event comprises the second betting option, the total return to the bettor comprises an amount that at least approximates the desired odds.*” as claim **59** (and

similarly claims 66 and 72) recites. *See Id.* Accordingly, the Examiner never shows that Brenner discloses such features of claim 59 (and similarly claims 66 and 72). Furthermore, Brenner does not disclose such features. Because the Examiner fails to show that all limitations of claims 59, 66, and 72 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 59, 66, and 72. *See Id.* Accordingly, if the Examiner was attempting to reject these claims under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 59, 66, and 72. The rejection of dependent claims 59, 66, and 72 is thereby improper.

21. Twentieth Group: Claims 9 and 43 – No *Prima Facie* Showing of Anticipation

SEPARATE ARGUMENT OF PATENTABILITY

The Twentieth Group is a subset of the Second Group and is therefore patentable for the reasons set forth above for the Second Group. The Twentieth Group is a subset of the Fourth Group and is therefore patentable for the reasons set forth above for the fourth Group. In addition, the following separate arguments of patentability apply.

a. The Examiner fails to show that Brenner teaches, let alone suggests, all limitations of claims 9 and 43.

The Examiner fails to show that all limitations of dependent claims 9 and 43 are taught or suggested by Brenner.

Dependent claim 9 is representative of the group and together with claim 1, from which it depends, recites in part:

b) determine odds for [a] plurality of betting options, ...

c) determine that a combination of at least ... first odds [for a first betting option] and ... second odds [for a second betting option] at least approximates ... desired odds [as received from a bettor]; and

d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:

*a first bet on the first betting option, and
a second bet on the second betting option...*

determine that no combination of the determined odds at least approximates the desired odds; and

based at least in part on determining that no combination of the determined odds at least approximates the desired odds, establish for the bettor a third bet on one of the plurality of betting options at the determined odds for that betting option. (emphasis added).

In rejecting claim 9 (and similarly claim 43), the Examiner is of the opinion that:

... The system discloses displaying actual and predicted payoffs, racing odds and handicapping information to a gambler (col. 2, lines 53-54). The system calculates for the gambler a rating for a horse based on different 'weights' for various handicapping categories (col. 3, lines 5-10). **Therefore the system determines a set odds or rating based on a gambler's criteria and if the gambler finds them unfavorable then he/she can use the system to place some other bet.** Final Office Action, paragraph 5, page 5. (emphasis added).

The Examiner's rejection is flawed for numerous reasons. First, the Examiner mischaracterizes Brenner. Specifically, the Examiner states that the Brenner system "determines a set odds or rating based on a gambler's criteria and if the gambler finds them unfavorable then he/she can use the system to place some other bet." Id. While Brenner column 3, lines 5-10, for example, may disclose that the system "determines ... a rating based on a gambler's criteria," neither this portion of Brenner, nor Brenner in general, discloses that the system "determines a set odds ... based on a gambler's criteria." Furthermore, a rating and odds as disclosed by Brenner are not one in the same. Similarly, a rating as disclosed by Brenner is not odds as recited by the claims.

Second, the Examiner never discusses the limitations of claim 9 (and similarly claim 43). See Id. In particular, even assuming, *arguendo*, that the Brenner system may determine a rating based on a gambler's criteria and a gambler may place some other bet if he/she finds the rating

unfavorable, the Examiner never correlates such alleged features to the limitations of claim 9 (and similarly claim 43) or in other words, never discusses the limitations of claim 9 (and similarly claim 43). *See Id.* Specifically, finding a rating, let alone odds, unfavorable and thereby placing some other bet is not “*determine[ing] that no combination of the determined odds at least approximates the desired odds,*” and based on such a determination “*establish[ing] ... a third bet on one of the plurality of betting options,*” as claim 9 (and similarly claim 43) recites. Accordingly, the Examiner never shows that Brenner discloses the features of claim 9 (and similarly claim 43). Furthermore, Brenner does not disclose such features.

Because the Examiner fails to show that all limitations of dependent claims 9 and 43 are taught by Brenner, the Examiner fails to establish a *prima facie* case of anticipation of these claims.

Furthermore, the Examiner fails to provide, and the record does not show, any reasoning as to why a person of ordinary skill in the art would modify Brenner to include the features of claims 9 and 43. *See Id.* Accordingly, if the Examiner was attempting to reject claims 9 and 43 under Section 103 as being obvious over Brenner, Applicants cannot address such an obviousness rejection, and moreover need not address such a rejection, since a *prima facie* showing of obviousness was never made.

For at least the foregoing reasons, the Examiner fails to show that Brenner teaches, let alone suggests, all the limitations of claims 9 and 43. The rejection of dependent claims 9 and 43 is thereby improper.

D. CONCLUSION

In view of the foregoing, Appellants submit that all of the pending claims are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner’s rejection of these claims.

Respectfully submitted,

August 10, 2009
Date

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VIII. CLAIMS APPENDIX

1. **(Previously Presented)** An apparatus comprising at least one processor having instructions associated therewith that when executed make the processor operable to:

- a) receive from a bettor a wager on an event at desired odds,
in which the event comprises a plurality of participants and a plurality of betting options;
- b) determine odds for the plurality of betting options, the odds comprising at least:
 - i) first odds for a first betting option, and
 - ii) second odds for a second betting option;
- c) determine that a combination of at least the first odds and the second odds at least approximates the desired odds; and
- d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:
 - a first bet on the first betting option, and
 - a second bet on the second betting option.

Claim 2 **(Canceled)**.

3. **(Previously Presented)** The apparatus of claim 1, in which the instructions, that when executed, make the processor further operable to:

- based at least in part on a result of the event comprising any of the first betting option and the second betting option, determine that the wager comprises a winning wager; and
- based at least in part on determining that the wager comprises the winning wager, determine a total return for the wager.

Claims 4-7 (**Canceled**).

8. (**Previously Presented**) The apparatus of claim 1,

in which the wager comprises a bet amount; and

in which the instructions, that when executed, make the processor further operable to:

allocate a first portion of the bet amount to the first bet; and

allocate a second portion of the bet amount to the second bet.

9. (**Previously Presented**) The apparatus of claim 1, in which the instructions, that when executed, make the processor further operable to:

determine that no combination of the determined odds at least approximates the desired odds; and

based at least in part on determining that no combination of the determined odds at least approximates the desired odds, establish for the bettor a third bet on one of the plurality of betting options at the determined odds for that betting option.

10. (**Previously Presented**) The apparatus of claim 1, in which the instructions, that when executed, make the processor further operable to:

determine a target percentage based at least in part on the desired odds and a takeout associated with the wager;

determine a first percentage for the first odds; and

determine a second percentage for the second odds; and

in which to determine that the combination of at least the first odds and the second odds at least approximates the desired odds comprises to determine that at least the first percentage and the second percentage at least approximates the target percentage.

Claim 11 (**Canceled**).

12. (**Previously Presented**) The apparatus of claim 55, in which the type of bet comprises at least one of:

- a win bet,
- a place bet,
- a show bet,
- an exacta bet,
- a trifecta bet,
- a superfecta bet, and
- a quinella bet.

13. (**Original**) A method for managing bets, comprising:

- identifying a field of participants for an event, each participant associated with particular odds to finish in a particular subset of finishing positions in the event;
- identifying customized odds for a bet;
- selecting a plurality of participants from the field of participants such that the odds associated with each of the selected participants combines to at least approximate the customized odds for the bet;

establishing the bet on the selected participants.

14. **(Original)** The method of claim 13, wherein the bet is associated with a bet amount and comprises a bet that at least one of the selected participants will finish in a predetermined subset of finishing positions associated with the event.

15. **(Original)** The method of claim 14, further comprising paying a total return associated with the bet, wherein the total return is based at least in part upon the customized odds.

Claim 16-18 **(Canceled)**.

19. **(Original)** The method of claim 13, wherein:
the event comprises a pari-mutuel wagering event; and
selecting a plurality of participants from the field of participants is performed at least in part while wagering on the event is ongoing.

20. **(Original)** The method of claim 14, further comprising allocating a portion of the bet amount to each of the selected participants, wherein the allocation is based at least in part upon the odds associated with each of the selected participants.

Claim 21 **(Canceled)**.

22. **(Original)** The method of claim 13, further comprising determining a target percentage based at least in part upon the customized odds for the bet and a takeout associated with the bet, and wherein selecting a plurality of participants from the field of participants further comprises selecting a plurality of participants based at least in part upon the target percentage.

23. **(Original)** The method of claim 13, wherein each of the selected participants comprises a plurality of participants.

24. **(Original)** The method of claim 23, wherein:
the field of participants comprises a plurality of horses in a horse race; and
the bet comprises one of an exacta bet, a trifecta bet, a superfecta bet, and a quinella bet.

25. **(Previously Presented)** A method comprising:
a) receiving from a bettor a wager on an event at desired odds,
in which the event comprises a plurality of participants and a plurality of betting options;
b) determining odds for the plurality of betting options, the odds comprising at least:
 i) first odds for a first betting option, and
 ii) second odds for a second betting option;
c) determining that a combination of at least the first odds and the second odds at least approximates the desired odds; and
d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establishing for the bettor at least:
 a first bet on the first betting option, and

a second bet on the second betting option.

26. **(Previously Presented)** The method of claim 25, further comprising:

determining that the wager comprises a winning wager based at least in part on a result of the event comprising any of the first betting option and the second betting option; and
based at least in part on determining that the wager comprises the winning wager,
determining a total return for the wager.

Claims 27-29 **(Canceled)**.

30. **(Previously Presented)** The method of claim 25,

in which the wager comprises a bet amount; and
in which the method further comprises allocating a first portion of the bet amount to the first bet; and
allocating a second portion of the bet amount to the second bet.

Claims 31-32 **(Canceled)**.

33. **(Previously Presented)** The method of claim 25, further comprising:

determining a target percentage based at least in part on the desired odds and a takeout associated with the wager;
determining a first percentage for the first odds; and
determining a second percentage for the second odds; and

in which determining that the combination of at least the first odds and the second odds at least approximates the desired odds comprises determining that at least the first percentage and the second percentage at least approximates the target percentage.

Claim 34 (Canceled).

35. (Previously Presented) The method of claim 63, in which the type of bet comprises at least one of:

- a win bet,
- a place bet,
- a show bet,
- an exacta bet,
- a trifecta bet,
- a superfecta bet, and
- a quinella bet.

36. (Previously Presented) An apparatus comprising at least one processor having instructions associated therewith that when executed make the processor operable to:

- a) receive from a bettor a wager on an event, the wager comprising a first betting option at desired odds, and

in which the event comprises a plurality of participants and a plurality of betting options including the first betting option;

- b) determine odds for the plurality of betting options, the odds comprising at least:

- i) first odds for the first betting option, and
- ii) second odds for a second betting option;
- c) determine that at least the second odds in combination with the first odds at least approximates the desired odds; and
- d) based at least in part on determining that at least the second odds in combination with the first odds at least approximates the desired odds, establish for the bettor at least:
 - a first bet on the first betting option at the first odds, and
 - a second bet on the second betting option at the second odds.

37. **(Previously Presented)** The apparatus of claim 36, in which the instructions, that when executed, make the processor further operable to:

- determine that the wager comprises a winning wager based at least in part on a result of the event comprising any of the first betting option and the second betting option; and
- based at least in part on determining that the wager comprises the winning wager, determine a total return for the wager.

Claims 38-40 (**Canceled**).

41. **(Previously Presented)** The apparatus of claim 36, in which the wager comprises a bet amount; and

- in which the instructions, that when executed, make the processor further operable to:
 - allocate a first portion of the bet amount to the first bet; and
 - allocate a second portion of the bet amount to the second bet.

Claim 42 (Canceled).

43. **(Previously Presented)** The apparatus of claim 36, in which the instructions, that when executed, make the processor further operable to:

determine that none of the determined odds in combination with the first odds at least approximates the desired odds; and

based at least in part on determining that none of the determined odds in combination with the first odds at least approximates the desired odds, establish for the bettor only the first bet on the first betting option at the first odds.

44. **(Previously Presented)** The apparatus of claim 36, in which the instructions, that when executed, make the processor further operable to:

determine a target percentage based at least in part on the desired odds and a takeout associated with the wager;

determine a first percentage for the first odds; and

determine a second percentage for the second odds; and

in which to determine that at least the second odds in combination with the first odds at least approximates the desired odds comprises to determine that at least the second percentage in combination with the first percentage at least approximates the target percentage.

Claim 45 (Canceled).

46. **(Previously Presented)** The apparatus of claim 68, in which the type of bet comprises at least one of:

- a win bet,
- a place bet,
- a show bet,
- an exacta bet,
- a trifecta bet,
- a superfecta bet, and
- a quinella bet.

47. **(Previously Presented)** The apparatus of claim 1,
in which the first odds are more than the desired odds, and
in which the second odds are more than the desired odds.

48. **(Previously Presented)** The apparatus of claim 1,
in which the first odds are different from the desired odds, and
in which the second odds are different from the desired odds.

49. **(Previously Presented)** The apparatus of claim 48,
in which to establish the first bet comprises to establish the first bet on the first betting option at the first odds; and
in which to establish the second bet comprises to establish the second bet on the second betting option at the second odds.

50. **(Previously Presented)** The apparatus of claim 1,
in which the wager comprises a selection by the bettor of at least a first participant;
in which at least the first betting option is associated with at least the first participant; and
in which to establish the first bet on the first betting option further comprises to establish
the first bet on the first betting option based at least in part on the first betting option being
associated with at least the first participant and the bettor having selected the first participant.

51. **(Previously Presented)** The apparatus of claim 1,
in which the instructions, that when executed, make the processor further operable to
select from the plurality of participants at least a first participant;
in which at least the first betting option is associated with at least the first participant; and
in which to establish the first bet on the first betting option further comprises to establish
the first bet on the first betting option based at least in part on the first betting option being
associated with at least the first participant, and the first participant having been selected from
the plurality of participants.

52. **(Previously Presented)** The apparatus of claim 1,
in which the wager comprises a selection by the bettor of the first betting option;
in which the first betting option comprises at least a first participant finishing the event in
accordance with a type of bet; and

in which to establish the first bet on the first betting option further comprises to establish the first bet on the first betting option based at least in part on the bettor having selected the first betting option.

53. **(Previously Presented)** The apparatus of claim 52, in which the type of bet comprises at least one of:

- a win bet,
- a place bet,
- a show bet,
- an exacta bet,
- a trifecta bet,
- a superfecta bet, and
- a quinella bet.

54. **(Previously Presented)** The apparatus of claim 1, in which the instructions, that when executed, make the processor further operable to cause the bettor to be notified that:

- the first bet has been established for the bettor on the first betting option, and
- the second bet has been established for the bettor on the second betting option.

55. **(Previously Presented)** The apparatus of claim 1, in which each of the plurality of betting options comprises a type of bet and at least one specified participant finishing the event in at least one specified finishing position.

56. **(Previously Presented)** The apparatus of claim 1, in which the wager comprises a winning wager when a result of the event comprises any of:

the first betting option, and

the second betting option.

57. **(Previously Presented)** The apparatus of claim 3,
in which the desired odds are different from the first odds and the second odds;
in which to establish the first bet comprises to establish the first bet on the first betting option at the first odds;
in which to establish the second bet comprises to establish the second bet on the second betting option at the second odds; and
in which the total return at least approximates the desired odds.

58. **(Previously Presented)** The apparatus of claim 8,
in which the first portion allocated to the first bet comprises a first amount that is determined based at least in part on the first odds for the first betting option; and
in which the second portion allocated to the second bet comprises a second amount that is determined based at least in part on the second odds for the second betting option.

59. **(Previously Presented)** The apparatus of claim 8,
in which the wager comprises a winning wager when a result of the event comprises any of:
the first betting option, and

the second betting option;

in which the first portion allocated to the first bet is such that when the result of the event comprises the first betting option, a total return to the bettor comprises an amount that at least approximates the desired odds; and

in which the second portion allocated to the second bet is such that when the result of the event comprises the second betting option, the total return to the better comprises an amount that at least approximates the desired odds.

60. (Previously Presented) The method of claim 25,

in which the desired odds are different from the first odds and the second odds;

in which establishing the first bet comprises establishing the first bet on the first betting option at the first odds; and

in which establishing the second bet comprises establishing the second bet on the second betting option at the second odds.

61. (Previously Presented) The method of claim 25,

in which the wager comprises a selection by the bettor of the first betting option;

in which the first betting option comprises at least a first participant finishing the event in accordance with a type of bet; and

in which establishing the first bet on the first betting option comprises establishing the first bet on the first betting option based at least in part on the bettor having selected the first betting option.

62. **(Previously Presented)** The method of claim 61, in which the type of bet comprises at least one of:

- a win bet,
- a place bet,
- a show bet,
- an exacta bet,
- a trifecta bet,
- a superfecta bet, and
- a quinella bet.

63. **(Previously Presented)** The method of claim 25, in which each of the plurality of betting options comprises a type of bet and at least one specified participant finishing the event in at least one specified finishing position.

64. **(Previously Presented)** The method of claim 26,

- in which the desired odds are different from the first odds and the second odds;
- in which establishing the first bet comprises establishing the first bet on the first betting option at the first odds;
- in which establishing the second bet comprises establishing the second bet on the second betting option at the second odds; and
- in which the total return at least approximates the desired odds.

65. **(Previously Presented)** The method of claim 30,

in which the first portion allocated to the first bet comprises a first amount that is determined based at least in part on the first odds for the first betting option; and

in which the second portion allocated to the second bet comprises a second amount that is determined based at least in part on the second odds for the second betting option.

66. (Previously Presented) The method of claim 30,

in which the wager comprises a winning wager when a result of the event comprises any of:

the first betting option, and

the second betting option;

in which the first portion allocated to the first bet is such that when the result of the event comprises the first betting option, a total return to the bettor comprises an amount that at least approximates the desired odds; and

in which the second portion allocated to the second bet is such that when the result of the event comprises the second betting option, the total return to the better comprises an amount that at least approximates the desired odds.

67. (Previously Presented) The apparatus of claim 36, in which the desired odds are different from the first odds and the second odds.

68. (Previously Presented) The apparatus of claim 36, in which the first betting option comprises at least a first participant finishing the event in accordance with a type of bet.

69. **(Previously Presented)** The apparatus of claim 36, in which the wager comprises a winning wager when a result of the event comprises any of:

the first betting option, and

the second betting option.

70. **(Previously Presented)** The apparatus of claim 37,
in which the desired odds are different from the first odds and the second odds; and
in which the total return at least approximates the desired odds.

71. **(Previously Presented)** The apparatus of claim 41,
in which the first portion allocated to the first bet comprises a first amount that is
determined based at least in part on the first odds for the first betting option, and
in which the second portion allocated to the second bet comprises a second amount that is
determined based at least in part on the second odds for the second betting option.

72. **(Previously Presented)** The apparatus of claim 41,
in which the wager comprises a winning wager when a result of the event comprises any
of:

the first betting option, and

the second betting option;

in which the first portion allocated to the first bet is such that when the result of the event
comprises the first betting option, a total return to the bettor comprises an amount that at least
approximates the desired odds; and

in which the second portion allocated to the second bet is such that when the result of the event comprises the second betting option, the total return to the better comprises an amount that at least approximates the desired odds.

IX. EVIDENCE APPENDIX

- a) Reference entitled “Beginners Corner” (8 pages).
- b) Reference entitled “Book Review: Betting the Kentucky Derby” (2 pages)
- c) Reference entitled “How to Pick a Winning Horse at the Race Track” (1 page)

Beginner's Corner

Del Mar : Handicapping : Beginner's Corner : 

It's race day, you've arrived at the track and found your seats. There's lots of activity and you don't have the slightest idea what you are doing. Will this be a joyous, pleasurable event, or something you will endure and hope for the best? We want you to have a great time!

The pageantry of racing can not be found anywhere in any other sport: from the moment you wander to the paddock to watch these magnificent animals, to owners enjoying their horses, to the jockey boarding the horse when "riders up" is called, to the bugler announcing that the horses are coming on track... and then these magnificent animals bow their necks anticipating the race, asking to run. Some of them biting their ponies, others bucking. If you are lucky enough to attend when a star races, you will witness a horse that understands racing at its finest... you will see an individual in spectacular physical shape, with a mental attitude that is often not found with our human athletes.

Many are hooked just by viewing the horses on the way to their races, others like the challenge of picking horses to win and being right. People use various methods to handicap the races and you will hear arguments or jokes about others' choices. You will see boisterous folks saying "My horse can beat your horse," and you will understand that this is how it all got started, long ago. . . "Can your horse beat my horse though?"

The majority of this section is devoted to handicapping. However, most racing fans are in awe of this spectacular animal. Del Mar highlights and celebrates the horse every day. We are proud to have Trevor Denman as our race caller. Trevor is both an advocate for the sport as well as the horse. When you hear one of his calls, you will agree that he focuses on the horse and makes each race an event.

Our website is dedicated to fans of horses and horse racing. Spend some time exploring our website for all that you need to make your Del Mar racing experience more pleasurable. If you have questions don't hesitate to e-mail Del Mar. While you are reviewing this section, please don't forget to use the glossary located at the end.

Preplanning

Most fans like to know which horses will be racing on the day they plan to attend the races. Two days before the races are run, the Racing Secretary takes entries for the races. At Del Mar, he announces over a loudspeaker on the backside (the stable area) that he is taking entries for the races in the condition book. If he cannot fill those races, he will use the listed substitute race(s) in the condition book. And finally, if he can't fill the substitute races, he will write special races. The entries become available to race fans on the internet around 12:00 noon.

During the 48-hour period between the entries and the actual race day, a program is developed. The program contains a lot of important information including the actual betting numbers of the horses. Many fans, new and old, confuse the entry numbers with the program numbers. If you have the incorrect program number, you will not be betting on the correct horse!

In addition to handicapping seminars conducted during the weekends and on Labor Day, Del Mar offers post-race concerts on Fridays. Also check out the many other events that Del Mar offers daily.

Arriving at the Track

Seating and Tickets. Are you the type of person that likes to wander around and get to know a place? If you purchase grandstand seats, you need to know that you are not allowed full access to the track. Clubhouse seating allows you to wander all over (except for the Turf Club and a few other places). Many people get confused, but it is not much different than at a football game or basketball court where seating is defined by the amount of admission you've paid. Also, the admission price to a track does not include a reserved seat. You must purchase a seat separately. For your convenience there are photos which show the site lines of each seating area, as well as frequently asked questions about seating. You may also order your tickets in

advance, on-line.

Once you have your seats, and you've arrived at the track, you'll need to know a few things.

The Horse

Horse racing is as wonderfully compelling and complex as you want to make it. Some people come specifically to watch the horses run and do not bet. No Thoroughbred can start at a recognized pari-mutuel track unless it is registered with the Jockey Club. Before a Thoroughbred foal is approved, the registry requires that the color and all markings be clearly set forth in the application, such as a star, blaze, stripe, snip and stocking. A lip tattoo is also necessary. The tattoo is required before the horse ever races. If you want more information on the horse and the history of the Jockey Club, see [The Jockey Club site](#).

The Track

Many fans love the pageantry and attend the races to visit the paddock where the horses are saddled. In this area, the owners gather to watch their horses and the horses are led around so that everyone can see their condition. Some handicappers do not miss watching horses in the paddock. They want to know if their future wager is walking well, looks healthy and is relaxed enough to win a race. It is here that the jockeys come out, get instructions from the trainers and then are booted up onto the horse.

The Thoroughbred Owners of California has a handbook on-line for owners. [Chapter 2 -- The Game](#) does a great job of explaining horse racing. And while [Chapter 16 -- Race Day](#) is specifically for owners, it also explains what happens on race day. To give you a flavor of the complexities of this sport, [Chapter 20 -- Ins-and-Outs](#) explains many of the rules that face the owners and trainers in this industry. Most of these rules protect the fan, but some rules protect the owners and the horses.

Handicapping

There are many forms of handicapping. In fact, the methods may be limitless. Common types are class, speed, pace, trip and computer handicapping.

Class handicapping is very difficult to explain mostly because, like beauty, it is in the eye of the beholder. Class is hard to define. Some of the most rousing arguments in horse racing has to do with the definition of class. Generally, class handicappers are willing to say "Horse A ran at this level, which is perfect, and Horse B has never won at this level." Horse A is therefore classier than Horse B and should beat Horse B. However, handicappers are also looking at Horse B to determine whether form is improving. Perhaps Horse B is young and destined for better things, while Horse A is losing a step?

Speed handicappers use different types of speed figures. Speed figures measure how fast the horse ran, taking into consideration the track variant (how fast or slow the track played in the last race), class and other variables. Some people purchase speed figures (Thoroughbred or [Ragozin](#)). Others use the speed figures provided by the [Daily Racing Form](#) (Beyer Speed Figures).

Pace Handicapping is based upon the turn times of horses, as well as the "pace of the race." Is your horse a front running type? Are many of the horses front runners that will run at about the same speed? Pace theories basically state that this kind of race might set up for a come from behind horse to pick up the pieces after the speed burns itself out. Pace numbers are assigned to the horses so that when a lot of speed is in the race, the handicapper can tell which horse is faster and thus able to run ahead of the others. For example, Horse A might be a front running horse, but not as fast as Horse B which is also a front runner. If there is no speed save one horse, this is called "lone speed." Many handicappers believe that horse will be able to steal the race. [Bloodstock Research Information Services \(BRIS\)](#) uses pace numbers as do other Internet services.

Trip handicappers make it a point to watch nearly all the races run during a meet. They take extensive notes and watch for trouble during a race. They make it a point to also watch the race replays every night and often

tape them for review before attending the races in which "their" horses are running. They may make a note on certain horses to bet next time out. The list they develop is usually called "horses to watch". Many of the free on-line links we furnish have "horses to watch" lists.

Computer handicapping is fairly straight forward. Someone develops a computer program, you buy it and use it to handicap the races. Today, BRIS and a few other sources allow you to download the races to your computer to "tweak" the race card to come up with your selections. There are countless computer programs on horse racing. Many are suitable; some are not. Caveat emptor.

Most people use a blending of these various methods. Some people use other services. The Del Mar website has provided [Free Links](#) and [Commercial Links](#) on handicapping.

The Gamble

About Pari-Mutuel Wagering. When you make a wager at a racetrack you are NOT betting against the "house" as with most casino games. Pari-mutuel wagering means "betting amongst ourselves." The odds are dynamic and are solely dependent upon how you, the participants, place your wagers. When you're at the track or a simulcast wagering facility, the track extracts a commission from all wagers made and redistributes the remaining funds (or wagering "pool") among the winners. In fact, the racetrack has absolutely no interest in the outcome of a race. The track receives its commission per wager, similar to a stockbroker's compensation, no matter if a favorite or longshot wins. **YOUR** wagering determines the favorite and longshot odds, **NOT** racetrack management.

The How-To's of Wagering. At Del Mar (and its off-track wagering locations) the minimum straight win, place or show wager is \$2. The final winning prices are all based on a \$2 wager. For example, if you bet \$10 to Win on **Best Pal**, and the Win price was \$5.20, you would fill your pocket with a total of \$26. The math looks like this: [\$10 multiplied by \$5.20 Win divided by \$2 minimum = \$26.00].

Straight \$2.00 Wagers:

- **WIN** -- You win if your horse finishes first. (On average over 30% of favorites win.)
- **PLACE** -- You win if your horse finishes first or second. (On average over 45% of favorites win or place.)
- **SHOW** -- You win if your horse finishes first, second or third. (On average over 60% of favorites win, place or show.)
- **WIN/PLACE/SHOW** -- An equal amount bet "across the board" to win and place and show. For example, \$2 across the board, or \$2 win and place and show.

Exotic Wagers. These wagers are generally more difficult to win than **Straight Wagers** and may require some advance handicapping. However, the potential payouts are significantly greater. (Not all racetracks offer every exotic wager. These are general guidelines; different tracks offer slight variations.)

- **DAILY DOUBLE** - To win you must pick the winners of two consecutive races. Wagers must be placed before the first of the two races. Minimum bet is \$2.00.
- **PICK THREE** - To win you must pick the winners of three consecutive races. Wagers must be placed before the first of the three races. Minimum bet is \$1.00.
- **EXACTA** - To win you must pick the first two horses to finish in exact order in a single race. Minimum bet is \$1.00.
- **TRIFECTA** - To win you must pick the first three horses to finish in exact order in a single race with eight or more betting interests. Minimum bet is \$1.00.
- **QUINELLA** - To win you must pick the first two horses to finish in either order in a single race. (Easier than an Exacta, because either horse can finish first or second.) Minimum bet is \$2.00.
- **SUPERFECTA** - To win you must pick the first four horses in exact order of finish in a single race with eight or more betting interests. Minimum bet is \$1.00.
- **PICK SIX** - To win you must pick the winners of six consecutive races. Wagers must be placed before the first of the six races. (This is a **very** difficult wager, but the payouts can be very high!) Minimum bet is \$2.00.
- **PICK FOUR** - Similar to the PICK SIX, but uses the last four races. Minimum bet is \$2.00.

- **PLACE PICK ALL** - You win a major payoff if you pick the winners or second-place finishers of the entire card (8, 9 or 10 races). If no ticket contains the winning combination for all races, the payoff will go to the ticket with the highest number of correct selections. Minimum bet is \$1.00.
- **WIN, PLACE AND SHOW PARLAY** - Parlay means to take your winnings (if any) and wager them on the next race. Minimum bet is \$2.00.

Sources of Important Information

How much will my wager pay if I win?

Approximate Payoff for a \$2 Win Bet

Odds	Pays	Odds	Pays
1-9	\$2.20	2-1	\$6.00
1-5	\$2.40	5-2	\$7.00
2-5	\$2.80	3-1	\$8.00
1-2	\$3.00	7-2	\$9.00
3-5	\$3.20	4-1	\$10.00
4-5	\$3.60	9-2	\$11.00
1-1	\$4.00	5-1	\$12.00
6-5	\$4.40	6-1	\$14.00
7-5	\$4.80	7-1	\$16.00
3-2	\$5.00	8-1	\$18.00
8-5	\$5.20	9-1	\$20.00
9-5	\$5.60	10-1	\$22.00

Daily Program - Contains race by race listing of all the horses running in each race along with their jockeys, the number each horse is assigned and the Morning Line odds.

Del Mar's CyberTote Board - Toteboards keep a running tally of the total monies, or handle, wagered, as well as changes in odds, on the current race for every horse.

Daily Racing Form - is a tabloid newspaper devoted exclusively to racing. It contains complete listings of past performances on every horse.

Decision Making

Your first few times at the track, you may want to limit your betting practices. Most experienced horse players have a bankroll, the amount they start with, and do not ever gamble more for that particular day. They also decide in advance whether they will bet one or two units per race, or extra units on a race on which they feel particularly confident. Most horse players don't bet every race, except for "fun only" days. Instead they prefer to focus on those races in which they excel.

There are a number of ways new bettors can approach making their decisions on betting. Some first timers choose to go with first timers luck. They choose the horse with the prettiest silks, or the pretty gray horse, or look at the favorite and bet on that one. Others bring along their daily local newspaper and choose to bet only newspaper picks because those picks have been winning. Some bet on the nicest, healthiest looking horse in the paddock.

At Del Mar, each day there is a "Cybercast" show shown on television as well as RealPlayer on the Internet. This show is also broadcast throughout Del Mar. New bettors might want to listen to the information offered by these handicappers. Note, however, like anyone, they have bad spells, some of which have been known to last an entire season.

A simple method sometimes played by folks wanting a good time, but by putting very little effort forward, is to bet the odds, combined with the highest speed figures, combined with the average earnings per horse. This will at least show you the main competitors in the race. It will not, however, show you young horses that may have little experience that are ready to give a top effort. It won't show you that an older horse is tailing off or perhaps just coming back into form. For that you need the Daily Racing Form or the DRF as it is commonly known.

Another simple method is to bet the odds, but not the favorite, perhaps betting the 2nd or 3rd choice of the betting public.

The Del Mar site also has a number of links to [Free Picks](#) for the track. Some of these folks are very good at picking winners. Some specialize in long-shots (longer odds horses) and therefore don't succeed as often, but when they do, the payoffs can be very rewarding.

Ready to Make a Bet

Whether you've decided on the pretty gray filly or have done some major work to make your choice, it's now time to make that bet. You do not go up to the teller and say "I want to bet \$2 to show on that pretty gray filly." Each horse, as previously stated, is assigned a program number. If your horse is the #4 in the second race, your bet would be:

"DEL MAR, Second Race, \$2.00 to show on #4"

Some bettors write their bets on that race's program page in exactly the way they'll call out the bet to the teller. That way, should it be very hectic -- as it often is -- when making bets, it's easy to remember what the actual bet is.

The teller will punch in your bet and your ticket will be spit out. Make sure you take your ticket, count your change and verify that your ticket is correct.

Uncertain? A bit nervous? Del Mar has SAM assistants (in teal vests and khaki pants or skirts) who are located on each floor of the Grandstand and Clubhouse. They are there to assist people in learning how to bet, how to use mutuel windows and how to use the betting machines. Customer Service representatives can also help out. They wear teal blazers and khaki pants or skirts. Do not hesitate to ask!

Links for Beginners

- [Del Mar Chat Room](#) -- Chat with other horseplayers about the game or about Del Mar.
- [Del Mar Forum](#) -- A place to ask questions of experienced handicappers or discuss horse racing.
- [Glossary of Racing Terms A-Z](#)
- [How to Use the Daily Racing Form](#) -- from the DRF

Glossary of Racing Terms

Age. Every horse celebrates a birthday on January 1, regardless of the actual date of birth. Yes, this would mean a horse born on December 31st would be a yearling on January 1st. However, the breeding industry avoids this problem by timing the breeding season to start in February. (Mares carry their foals for approximately 11 months.)

Two-year-olds only race against other two-year-olds. Three-year-olds normally only compete amongst

themselves during the first half of the year then begin to challenge older horses as they gain experience. Many handicappers watch for older horses racing against three-year-olds. It takes a special three-year-old to challenge their elders and win. Handicappers also watch four-year-olds as they come of age. Because most three-year-olds are protected for a majority of their racing lives, as a four-year old they may have trouble making the transition to becoming a competitive older horse.

Chalk - When a horse is the favorite -- or has the most money bet on it -- that horse is termed the "chalk." Interestingly, this term comes from the pre-computer era of the bookie. When a bookie recorded bets on a blackboard, the odds would change over and over as more and more people bet on the favorite. The horse became known as the "chalk" because the horse's name would disappear in chalk dust as the bookie constantly erased and lowered the horse's odds.

Condition book. The Racing Secretary at all tracks writes a condition book for upcoming races every two weeks. The condition book allows horsemen to schedule their horses for races. *Del Mar's condition book* is available on-line. The condition book also reminds horsemen of upcoming stakes and nomination deadlines.

Entry. In California, when two or more horses entered in a race belong to the same owner, they are called "entries" or "coupled" horses. In other states, a coupled entry is defined when two or more horses are trained by and/or owned by the same person. The coupled entry is comprised of two or more horses and are a single betting interest. For example: In California, Mrs. Smith owns horse A and horse B. Mrs. Smith's entry would thus be 1 and 1a. This is considered a bet on #1 for betting purposes. Once in awhile, there will be more than one coupled entry: Mrs. Smith owns Horses A and B while Mr. Jones owns Horses C and D. Mr. Jones' entry would be numbers 2 and 2a. In other states, if the same trainer conditions Horse A and Horse B, these horses will be coupled, and/or if the two horses are owned by the same person, they will be coupled.

While this seems complex, what it means is that you get two horses for the price of one. However, it usually means that a horse you thought would be at long odds may be affected by the other "coupled" entry. The industry has not determined how to address this issue. Some bettors believe that common interests mean that the horses should automatically be coupled (to prevent conflict of interest). Other bettors believe it isn't fair that the other horse has lower odds because of common ownership (or conditioning). This is the reason that each state has differing rules on coupling.

Handle - Amount of money wagered on a single race or a full-day of racing (e.g., the handle for the day was \$2,000,000).

Morning Line. A prediction by the Track Line Maker of what the final odds will be based on how the public wagers. It depends on the line maker whether the prediction is accurate. Many people often get confused thinking that the Morning Line is an indicator of the possible winner. This is one critical area of handicapping.

The public can and does choose the wrong horse, termed a "false" favorite. Many people bet exclusively on favorites without handicapping the races. If the horse is a false favorite, the other bettors -- especially those who do not like to bet low odds -- will seek out a more qualified horse. The payoff is usually much better. The trick is finding those horses that are false favorites and not talking yourself into believing a favorite isn't qualified to win today's race.

Past Performance. A history of each horses' racing performance: how he/she ran, placed, the jockey, at what track, etc. The past performances are often referred to as the "pp's." Reading the Daily Racing Form, or any document that contains the past performances, is not as difficult as it may look.

- [Beginners Guide from DRF](#)

Post position. The post position is the position from which the horse breaks out of the gate. Most of the time a horse comes out of the same gate number as his/her program number. However, if there are coupled entries in the race, that isn't possible. Both the 1 and the 1a cannot break from the 1 slot so they draw for the post positions. Your program will show you which post position the horse breaks from.

Some handicappers keep track of post positions believing there is a track bias. They may have observed, for

example, that the outside is playing better than the inside (or reverse). As a result, they might be willing to bet a certain horse that is not quite as good as the others because of its post position.

Post Time. The time the horses are expected to reach the starting "post"; when a race begins.

Race Card. The schedule of races on a specific day.

Race Types

Stakes and Handicap Races. Del Mar has one of the richest stakes schedules in this country which includes just about every racing distance and surface, see our link, [Stakes Schedule](#). Graded stakes and handicap races are the highest level of racing at any race track. The best horses usually compete in stakes competition. The owner must pay nomination fees and entry fees in order to run their horse. An example of a very early nomination fee is the Breeders Cup. This fee (\$500) is paid in the foal's weanling year. Other fees are due a month or several weeks before the race is scheduled to run. The owner may also have to pay a fee to enter the horse during the entries. These fees are usually paid back in the purse. The nominations will frequently include many horses. The conditions of the race will determine who gets to race. (At present the industry is experiencing a horse shortage. As a result, it is often not necessary to leave horses out of races.)

The Racing Secretary assigns weights to horses in a handicap race. The toughest horse must bear the highest weight, while the least competitive horse will have the lowest weight. Assigning different weights is an attempt to level the playing field between competitors, just like a handicap in golf. There are also weight breaks for younger horses or for a filly racing against colts. A stakes or handicap race can also list age conditions like "two-year-olds," "three-year-olds," "four-year-olds" or "three and up."

Overnight Stakes. The main difference between an overnight stakes race and a stakes race is the amount of entry fees a trainer must pay to enter the horse. Overnight stakes do not usually require nomination, entry and starting fees. Nominations for overnight stakes are generally taken up to a week (or less) before the race. Overnight stakes bring out quality horses to compete for excellent purse money, though usually not as much as in the highest quality stakes races.

Claiming Races. A claiming race means that the horses may be purchased by a qualified, licensed person for the claiming price listed in that race. Many people do not understand why someone would want a horse to be claimed. Just as in other professional sports, not all horses are good enough to be top competitors in stakes level races. Racing in the claiming ranks allows the owners, as well as the horses, the opportunity to win against horses of the same caliber. Depending on the track, a horse may be entered for as low as \$10,000 or as high as \$100,000. There is also another type of race called the optional claimer. In this case, the horses may be eligible to be claimed or they may be allowance horses, competing under allowance conditions, and therefore are not eligible to be claimed. This type of race was created to combine two types of races and help the Racing Secretary have a fuller field of horses for this type of race.

Starter Allowance Races. A horse entered in a starter allowance race cannot be claimed. The horse, however, must have run at a certain claiming level (depending on how the conditions are written) during a designated time (for example "since August 1998"). The starter allowance generally brings together the best of the the claiming-level competitors.

Allowance Race. Allowance races are exactly like their name implies. Allowances are made or "conditions are set" in order for the horse to be eligible in that race. Examples of allowance races are: Non-Winners of 2 (races), Non-Winners of 3 (races), Non-Winners of 4 (races). As you can see, each level is more competitive. A horse that has never won two races might have a hard time winning a race against horses that have won three. There are often other conditions like "of a race since August 5th, 1998" or "at a mile or over." Sometimes there are

monetary conditions set, such as "Non-Winners of \$3000" or "Non-Winners of 5000 lifetime." A good handicapper will make note of these conditions. Some horses entered in the race may be competitive against Non-winners of \$5000 lifetime, but not at all competitive against Non-Winners of three races.

These races are exciting for the fan and industry alike as we all learn whether a horse is going to be good enough to continue on to the stakes level of racing. It depends on the trainer and owner, of course, but often a horse will be run through all of their conditions before they are ever entered in a stakes race. Some feel that it is important to season a horse by going this route. Others feel that it is better to strike while the iron is hot and go after the better purses in stakes level racing. Some horses can't make the cut and go from the allowance to the claiming ranks and back over their careers.

Maiden Races. The term "maiden" means non-winner, the horse has never won a race. Some maidens, in fact, have never raced at all (nonstarter). There are two types of maiden races. Generally, the maiden special weight race is the best. A horse cannot be claimed out of a maiden special weight Race. The purses are also better than the maiden claiming race as well. Most of the time the maiden special weight races have the best youngest horses on the race track. They are often the best bred horses and often have the best connections (owners, breeders and trainers).

Scratch. When a horse is withdrawn from a race in which it's scheduled to run. Depending upon the type of wager you've placed, you're entitled to either a refund or your interest will automatically be transferred to the betting favorite.

For Pick Three wagers when a horse is scratched, the betting favorite no longer is substituted for the scratched horse. Under an amended CHRB rule, the wager is refunded if the scratch occurs before the first leg is run. A consolation pool is created when the scratch occurs after the first leg is run.

Horsemen are allowed to "scratch" their horses up to 24-hours after entries are taken, sometimes because a more suitable race has become available. There are many reasons to scratch a horse, however, including illness or injury. If the scratch occurs before the writing of the program, the numbers of the other horses change, which is where the confusion lies between entry and program numbers. If the scratch occurs after the program has been written and sent to the printer, the scratch is called a 'program scratch.' In that case, the other horses in the race do not change program numbers.

There are many rules regarding scratches. If a horse is scratched due to injury or illness, for example, the horse can't immediately be entered in another race. Depending upon the injury or illness (for example, if the horse was administered medications), there may be a time frame when a horse may not be entered.

Simulcast Wagering. The option to watch and wager on the races live via television broadcast. If you are unable to enjoy live racing at the track, you can attend any one of hundreds of simulcast wagering facilities nationwide that carry the Del Mar television broadcast, including California's own Southern and Northern California Off-Track Wagering network.

Tote Board. The infield graphics board, or tote board, provides the following information: the amount of money wagered on each horse individually in the win, place and show pools, updated odds, fractional and final race times, the results of the preceding race and additional messages including program changes, post time for the upcoming race and the time of day. The tote board is updated frequently. Also see [Del Mar's CyberTote Board](#) on our website.

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Book Review



Betting the Kentucky Derby:

How to Wager and Win on America's Biggest Horse Race

by Dean Keppler

DRF Press, April 2008, 128 pages paperback

Without a doubt, the most overanalyzed race in the world has to be the Kentucky Derby. The amount of information available can be overwhelming to the recreational bettor, and with a maximum field size of 20 entering the starting gate at Churchill Downs and over \$80 million bet into the pools, it is one race where huge payoffs can occur. In his latest book, DRF Press director Dean Keppler gives his recommended strategies on how to come out a winner in America's biggest race.

Keppler helps the reader separate the wheat from the chaff, giving examples of betting angles that are most likely to win, but more importantly, are also most likely to slip under the radar of the general public. Beyer figures, Tomlinson ratings, post positions, track bias, prep race schedule, workouts, and jockey-trainer combinations all help the player capitalize on what are often inefficient betting pools, not just in the Derby itself but on the undercard and also on Oaks day. He uses examples from the last few Derby runnings to show how some horses got away at long odds when, in retrospect they were actually logical choices and could have gone off at shorter odds. He also points out what are negative angles, such as which trainers and jockeys are winless in the Derby, and which post positions are least successful not only for the win but for the superfecta positions.

The large field size naturally leads to higher payoffs, but also the fact that there are many people betting into the pool who are not handicappers and instead are betting on such non-factors as colors, lucky numbers or birthdays, or the names of the horses or jockeys alone. Bettors who take the time to actually handicap the Derby using proven betting angles will be light years ahead of the public masses, and through skillful construction of exotic bets, one's chances increase of bringing home a "life-changing" score. To help newcomers to the sport, Keppler takes the time to explain how the parimutuel system works, first with the straight bets and how their odds are calculated, and then the exotic bets and how to properly construct tickets rather than blindly "boxing" several horses as the amateurs may do.

In the final chapter, he briefly touches on the Kentucky Oaks which is run the day before the Derby. Although it has a smaller maximum field size and has yielded more winning favorites than the Derby, it too has its nuances, and like Derby day, it too attracts a huge crowd at the track and large betting pools so the potential for an inefficient market comes into play yet again. He points out that not just the uninformed public, but also many professional handicappers and journalists have spent countless hours focusing on the Derby, so the Oaks and the stakes-filled undercards on both days can lead to some opportunities for a big hit. The potential is even greater if you parlay those undercard races with the big race in a multi-race bet like the Pick 6, Pick 4, or rolling Pick 3.

This book is completely geared for playing and handicapping America's biggest horse race and making those

once-in-a-lifetime horse racing jackpots a reality. **Keppler** simplified what can be a scary handicapping puzzle into easy to understand strategies that any bettor at any level of play can implement, making for a more enjoyable Derby whether you're at home, at your home track or OTB, or at Churchill Downs.

Betting the Kentucky Derby has a list price of \$14.95 and is available from Amazon.com for \$10.17.

Rating: 4/5

Books in the Elements of Handicapping series:




- [Betting Betting Maidens & 2-Year-Olds](#) - by Dan Illman
- **[Betting the Kentucky Derby](#)** - by Dean **Keppler**
- [Go for the Green](#) - by Bill Heller
- [Handicapping Contest Handbook 2nd Edition](#) - by Noel Michaels
- [Off the Charts](#) - by Nick Borg
- [Pedigree Handicapping](#) - by Lauren Stich
- [The Power of Early Speed](#) - by Steve Klein
- [Speed to Spare](#) - by Joe Cardello
- [Trainer Angles](#) - by Dean **Keppler**
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How to Pick a Winning Horse at the Race Track



By Lynn Lecours

eHow Community Member

Article Rating: ★★★★★ (17 Ratings)

Horse racing is exciting to watch and can be emotionally charged. Many people take the sport very seriously by investing countless hours studying racing forms, and following the reputations of breeders, jockeys and owners. If you don't want to make the sport your second job and you're out for a little fun, the following tips can help you win some money doing it.

Instructions

Difficulty: Moderate

1. Capitalize on levelheadedness. If possible, make your betting choices before arriving at the track. By acquiring the racing form in advance and picking your favorites before you arrive, your emotions will not come in to play when making decisions. The stress of putting your money on the line and getting caught-up in the excitement around you can influence your decisions

Things You'll Need:

- Racing form
- Betting money

2. As with any gambling venture, set a limit for what you will spend and don't exceed it.
3. All of the following horse elimination suggestions should be used when making decisions prior to arriving at the track. Expect some losses and expect to come out ahead at the end of the day and you are guaranteed a good time!
4. Eliminate any horse that has not run today's distance at today's track. Horses can be sprinters or long term stayers, but usually not able to win doing both. Race track distances vary from 5 furlongs to 2 1/2 miles
5. Eliminate from your picks any horse that has not run at least one race at today's track this season. Most horses are sensitive and require a period of adjustment to a new place. Several races at the new track are usually required to show good form.
6. Eliminate any horse that has not run a race within one month of today's race. Statistics show that a great majority of all winners have run a race within the past 21 days.
7. Eliminate any horse that has "performance notes" stating that the animal "bled, ran sore or was lame. The horse may be perfectly sound for today's race, but there is no need to take that chance.
8. Eliminate any horse that in its last race did not finish in the money (first, second or third place). Also, eliminate any horse did not finish within eight lengths of the winner in its last race.
9. After all these eliminations you should have a clear winning choice. Sometimes you will have two or three. Your final decision can be made based upon the jockey. A small percentage of jockeys win the majority of the races. In other words, a large percentage of jockeys never win. Check your jockey's history. Many races are won by a nose and it's the jockey's decision how to run the horse. There is great skill involved.

Tips & Warnings

X. RELATED PROCEEDINGS APPENDIX

None